



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2013-0157; FRL - 9798-2]

Petitions to Revise General Permit for U.S. Navy to Transport Vessels for the Purpose of Sinking in Ocean Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of petitions and opportunity for public comment.

SUMMARY: This notice announces the receipt of and invites public comment on petitions submitted by the Basel Action Network, the Sierra Club, and the Center for Biological Diversity, requesting that the U.S. Environmental Protection Agency take immediate action under the Marine Protection, Research and Sanctuaries Act to protect human health and the environment from polychlorinated biphenyls that leach from ships used for Navy's SINKEX program. The U.S. Environmental Protection Agency invites public comment on the aforementioned petitions for the purpose of determining how to respond to the requests for action related to the Marine Protection, Research and Sanctuaries Act.

DATES: Comments must be received on or before [insert date 30 days after publication].

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OW-2013-0157, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Mail: Send an original and three copies of your comments and enclosures (including references) to EPA Water Docket, U.S. Environmental Protection Agency, Mail Code: 2822-IT, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, Attention Docket No. EPA-HQ-OW-2013-0157.

Hand delivery: EPA Water Docket, EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue, N.W., Washington, DC 20460, Docket No. EPA-HQ-OW-2013-0157.

Deliveries to the docket are accepted only during their normal hours of operation: 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, call: (202) 566-2426, to schedule an appointment.

E- mail: ow-docket@epa.gov; Attention Docket No. EPA-HQ-OW-2013-0157. To ensure that EPA can properly respond to comments, commenters should cite the paragraph(s) or sections in the proposed permit to which each comment refers. Commenters should use a separate paragraph for each issue discussed, and must submit any references cited in their comments. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. Electronic files should avoid any form of encryption and should be free of any defects or viruses.

Instructions: Direct your comments to docket ID number EPA-HQ-OW-2013-0157. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit

information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The Federal <http://www.regulations.gov> web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the EPA Water Docket are listed in the docket index. Although listed in the index, certain material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the EPA Water Docket in Room 3334, 1301 Constitution Avenue (EPA West Building), N.W., Washington, DC 20004. The hours of operation of this Docket Facility are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Water Docket is (202) 566-2426.

FOR FURTHER INFORMATION CONTACT: Laura S. Johnson, Marine Pollution Control Branch (4504T), U.S. EPA, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; (202) 566-1273; johnson.laura-s@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Interested Entities

Category	Examples of interested entities
Federal Government.....	U.S. Navy, Maritime Administration, U.S. Army Corps of Engineers, U.S. Coast Guard, National Oceanic and Atmospheric Administration
State/Local/Tribal Government.....	Coastal communities
Industry and General Public.....	Shipyards, salvage companies, environmental remediation enterprises, commercial and recreational deep sea fishing interests, environmental interest groups

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this notice. This table lists the types of entities that EPA is now aware could potentially be interested in this notice. Other types of entities not listed in the table

could also be interested.

B. What Should I Consider as I Prepare My Comments for EPA?

Consider the following suggestions for preparing your comments:

1. Identify the docket identification number in the subject line on the first page of your response. Also, it would be helpful to EPA if you provided the name, date, and Federal Register citation related to your comments.
2. Explain your views as clearly as possible, including the subject matter about which you agree or disagree and why.
3. Describe any assumptions that you used.
4. Provide any technical information and/or data you used that support your views.
5. If you estimate potential burden or costs, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns.
7. Offer alternatives.
8. Make sure to submit your comments by the comment period deadline identified.

II. Background

The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972, as amended, also known as the Ocean Dumping Act, regulates the transportation and dumping of material into ocean waters. Under the MPRSA, no permit may be issued for ocean dumping where such dumping will unreasonably degrade or endanger human health or the marine environment.

In 1977, the U.S. Environmental Protection Agency (EPA) promulgated regulations for implementing the MPRSA permitting authority, 40 C.F.R. parts 220–229. 42 FR 2489 (Jan. 11,

1977). At that time, EPA issued a general permit to the U.S. Navy (Navy) for the Sink Exercise Program (SINKEX) to transport vessels from the United States, or from any other location, for the purpose of sinking such vessels in ocean waters in testing ordnance and providing related data. 40 C.F.R. 229.2. SINKEX involves the use of obsolete military vessels for target practice by military personnel, with the consequent sinking of the vessel. The Navy views these activities as essential for training personnel and testing military equipment. Vessels used for SINKEX are prepared according to the terms of the MPRSA general permit issued to the Navy.

Under the MPRSA general permit, obsolete vessels used in SINKEX are required to be sunk at least 50 nautical miles from land and at depths of at least 1000 fathoms (6000 feet). The permit requires that, prior to sinking, appropriate measures be taken to remove to the maximum extent practicable all materials that may degrade the marine environment. This includes the emptying of all fuel tanks and fuel lines to the lowest point practicable (followed by flushing with water and again emptying) and removing from the hulls other pollutants and all readily detachable materials capable of creating debris or contributing to chemical pollution. Thus, while the permit requires appropriate measures to remove to the maximum extent practicable all materials that may degrade the marine environment, the permit also recognizes that it may be impracticable to remove some materials.

In a letter dated August 2, 1999 from EPA to the Navy, EPA provided its interpretation of the MPRSA general permit requirement to “remove to the maximum extent practicable all materials that may degrade the marine environment” as including polychlorinated biphenyls (PCB) containing materials, such as ship components containing PCBs. See Letter from Robert H. Wayland, Director of the Office of Wetlands, Oceans and Watersheds, to Elsie L. Munsell, Deputy Assistant Secretary of the Navy (Aug. 2, 1999). This letter states that:

Before engaging in a SINKEX, the Navy must conduct an inventory of each SINKEX vessel to ascertain the presence of PCBs. This inventory and list of items removed prior to sinking must be provided to EPA in the annual report Before sinking a SINKEX vessel, qualified personnel at a Navy or other approved facility shall:

- Remove all transformers containing 3 pounds or more of dielectric fluid and all capacitors containing 3 pounds or more of dielectric fluid.
- Use all reasonable efforts to remove any capacitors and transformers containing less than 3 pounds of dielectric fluid from the vessel. Reasonable efforts include, but are not necessarily limited to, the removal of capacitors from electrical and control panels by using hand tools such as wire or bolt cutters or a screw driver.
- Drain and flush hydraulic equipment, heat transfer equipment, high/low pressure systems, cutting power machinery which uses cooling or cutting oil, and containers containing liquid PCBs at greater than or equal to 50 parts per million (ppm).

In the August 2, 1999 letter from EPA to the Navy, EPA noted that “it is often practicable to remove non-liquid PCB-containing materials, including: air handling system gaskets; rubber; plastic; dried applied paint that is flaked-off; electrical cable insulation; and other non-liquid coatings and material, before sinking the vessel.” To the extent that their removal is practicable, EPA explained that “these non-liquid PCB-containing materials are required to be removed under the MPRSA permit. However, when such objects cannot be practicably removed or their removal threatens the structural integrity of the vessels so as to impede the SINKEX, the Navy may leave such items in place (e.g., felt materials that are bonded in bolted flanges or mounted under heavy equipment, certain paints, and adhesives).” EPA further noted that “objects may be considered not capable of practicable removal if equipment must be disassembled or removed for access to the objects, if the objects must be removed by heat, chemical stripping, scraping, abrasive blasting or similar process, or if removal would endanger human safety or health even when conducted with protective equipment and reasonable safety measures.” Further, the August 2, 1999 letter states that the Navy shall report annually to EPA, the effort taken to clean each vessel prior to SINKEX and provide an estimate of the weight of PCBs present onboard at the time of sinking.

III. Today's Action

EPA is providing the opportunity for public comment on the two petitions received that request EPA amend the MPRSA general permit as it relates to removal of PCBs from ships used in Navy's SINKEX program. The first petition, dated June 2011, and submitted by the Sierra Club and the Basel Action Network, requested that EPA:

Amend the MPRSA general permit for SINKEX to comply with the MPRSA by reflecting the latest scientific knowledge about the amount of PCBs disposed through the SINKEX program and about leaching of PCBs from sunken ships. At a minimum, the permit should be amended to require:

- a. Materials containing PCBs to be removed from ships to the "maximum extent practicable" with the best current techniques; and
- b. Prior to sinking, remediate ships to the London Convention's "trace contaminant" requirement.

The second petition, dated April 2012, and submitted by the Basel Action Network, Sierra Club, and the Center for Biological Diversity, again requested that EPA amend the existing MPRSA permit for SINKEX:

1. Effective immediately, requiring all PCB-contaminated materials in concentrations of 50 ppm or greater to be removed from SINKEX vessels prior to sinking;
2. Requiring all PCB-contaminated materials in concentrations of less than 50 ppm to be removed from SINKEX vessels prior to sinking to the maximum extent practicable; and
3. Requiring additional studies to determine whether PCB-contaminated materials in

concentrations of less than 50 ppm constitute “trace” contaminants, such that their dumping will not cause undesirable effects including the possibility of bioaccumulation. Such additional studies should include the most recent data on the toxicity, persistence, and bioaccumulation of PCBs and should include monitoring at multiple recent sink sites. Studies should also assess the releases of other potentially hazardous pollutants into the marine environment from the SINKEX program including heavy metals, asbestos and radioactive substances.

Technical studies and data that accompanied the petitions are included in the docket for this proceeding. As noted above, EPA has not made the copyrighted material available on the Internet, but that material is publicly available in hard copy form via the Public Reading Room in EPA’s Docket Center.

Dated: March 28, 2013.

Nancy Stoner,
Acting Assistant Administrator,
Office of Water.

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